

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0051P

Withholding Tax

Fiscal Year ending February 3, 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2; 45 IAC 1-1-54; West Publishing Co. v. Ind. Dept of Revenue (1988), Ind. Tax. 524 N.E.2d 1329, 1333.

The taxpayer protests the late penalty.

II. **Tax Administration** - Interest

Authority: IC 6-8.1-10-1

The taxpayer protests the interest assessment.

STATEMENT OF FACTS

The late penalty and interest were assessed on the late filing of an annual withholding tax return for the fiscal year ending February 3, 2001.

The taxpayer is a company located out-of-state.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the error was the result of misinformation from the taxpayer's accountant, and, misinformation from a Department employee.

With regard to the misinformation from the taxpayer's accountant, the taxpayer's accountant is in an agency relationship with the taxpayer, and therefore, the taxpayer is liable for the accountant's actions when the accountant acts on the behalf of the taxpayer. 45 IAC 1-1-54.

With regard to the misinformation from the Department employee, the taxpayer provides no clear evidence that the department employee in question made a misrepresentation. "The state will not be stopped in the absence of clear evidence that its agents made representations upon which the party asserting estoppel relied." West Publishing Co.v. Ind. Dept of Revenue (1988), Ind. Tax. 524 N.E.2d 1329, 1333. Thus, as the taxpayer is unable to provide clear evidence of a misrepresentation from said department employee, the taxpayer fails to establish reasonable cause for filing late on this point.

The regulation which provides the guideline for penalty is as follows:

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties as (1) the taxpayer is liable for the accountant's actions, and (2) there is no clear evidence that said department employee made a misrepresentation. As inattention is negligence and subject to penalty, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

II. Tax Administration – Interest

Interest may not be waived according to statute. IC 6-8.1-10-1.